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HARYANA VIDHAN SABHA

The 10th September, 2019

No. H.V.S.-AD-1-2019/14435-41.—

BEFORE THE SPEAKER, HARYANA VIDHAN SABHA, CHANDIGARH

Petition No. 1 of 2019

Balwan Singh Daulatpuria, MLA, 40-Fatehabad, Haryana Assembly Constituency, S/o Sh. Lal Chand, R/o Village Daulatpur, Tehsil and District Fatehabad at present R/o 73, Anaj Mandi, Fatehabad.

...Petitioner

Versus

1. Sh. Pirthi Singh, MLA, 38-Narwana (SC), Haryana Assembly Constituency, S/o Sh. Ram Kishan R/o Village & Post Office Kalwan, Tehsil Narwana, District Jind.
2. Sh. Rajdeep, MLA, 56-Dadri, Haryana Assembly Constituency, S/o Sh. Sukhi Ram, R/o Ward No.7, Gandhi Nagar, Charkhi Dadri.
3. Smt. Naina Singh Chautala, MLA, 43-Dabwali, Haryana Assembly Constituency, W/o Sh. Ajay Singh Chautala, R/o Chautala House, 242-243, Ram Colony, Barnala Road, Sirsa.
4. Sh. Anoop Dhanak, MLA, 48-Uklana (SC), Haryana Assembly Constituency, S/o Sh. Ram Kumar, R/o 529, Amardeep Colony, Kamri Road, Hisar.

...Respondents

AND

Petition No. 3 of 2019

Abhay Singh Chautala, MLA, 46-Ellenabad, Haryana Assembly Constituency, S/o Ch. Om Prakash Chautala, R/o Tejakhera Farm House, Village Tejakhera, P.O. Chautala, District Sirsa (Haryana).

...Petitioner

Versus

1. Sh. Pirthi Singh, MLA, 38-Narwana (SC), Haryana Assembly Constituency, S/o Sh. Ram Kishan R/o Village & Post Office Kalwan, Tehsil Narwana, District Jind.
2. Sh. Rajdeep, MLA, 56-Dadri, Haryana Assembly Constituency, S/o Sh. Sukhi Ram, R/o Ward No.7, Gandhi Nagar, Charkhi Dadri.
3. Smt. Naina Singh Chautala, MLA, 43-Dabwali, Haryana Assembly Constituency, W/o Sh. Ajay Singh Chautala, R/o Chautala House, 242-243, Ram Colony, Barnala Road, Sirsa.
4. Sh. Anoop Dhanak, MLA, 48-Uklana (SC), Haryana Assembly Constituency, S/o Sh. Ram Kumar, R/o 529, Amardeep Colony, Kamri Road, Hisar.

...Respondents

Petitions under Article 191(2) under the provisions of Tenth Schedule to the Constitution of India and the rules framed thereunder.

Present:-

- Shri Sandeep Goyat, Advocate, Counsel for Petitioners in Petitions No. 1 & 3)
- Shri Gurminder Singh, Senior Advocate with Ms. Harpriya Khaneka, Advocate; Shri Gurnoor Singh Sandhu, Advocate and Ms. Sunita Chauhan, Advocate, counsel for Respondents No. 1 to 4 in Petitions No.1 and 3 along with Shri Pirthi Singh, Shri Rajdeep, Smt. Naina Singh Chautala and Shri Anoop Dhanak, MLAs i.e. Respondents No.1 to 4 in Petitions No.1 and 3 in person.

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ORDER

1. Two petitions i.e. Petition No.1 of 2019 titled “Balwan Singh Daulatpuria, MLA versus Shri Pirthi Singh, MLA and others” dated 25.03.2019 and Petition No.3 titled “Shri Abhay Singh Chautala, MLA versus Shri Pirthi Singh, MLA and others” dated 26.07.2019 were filed under Article 191(2) read with Tenth Schedule to the Constitution of India and the Haryana Legislative Assembly (Disqualification of Members on ground of Defection) Rules, 1986 praying for declaring the respondents as disqualified to be the Members of Legislative Assembly on account of their voluntarily giving up the membership of their original political party Indian National Lok Dal (**hereinafter referred to as ‘INLD’**).

2. In both the petitions, the facts and prayer are similar and identical, therefore, in order to avoid multiplication of procedure, findings and judgments, as same question of law is involved in both the petitions, vide order dated 13.08.2019 both the petitions were clubbed.

3. After going through both the petitions and having satisfied myself that the petitions comply with Rule 6 of Haryana Legislative Assembly (Disqualification of Members on Ground of Defection) Rules, 1986 and to comply with the provisions of Rule 7(3)(a & b), copies of the petitions along with annexures were ordered to be supplied through special messenger to all the respondents in both petitions and to the leader of their Legislative Party to file their respective reply/comments within a period of 7 days from the receipt of copy of petitions. However, on the request of respondents, in the interest of justice sufficient time was granted to them to file their respective reply.

4. All the respondents filed their separate reply/comments in both the petitions and copies thereof were supplied to the petitioners in both the petitions. Petitioner in Petition No.1 filed replication to the reply/comments filed on behalf of respondents in petition No.1. However, petitioner in Petition No.3 did not file replication.

5. In their petitions, the petitioners averred that the respondents contested the election on the symbol of “Spectacle” allotted to INLD and were also among those 19 candidates declared elected. The petitioners in both the petitions have alleged that the respondents i.e. Sh. Pirthi Singh, Sh. Rajdeep, Smt. Naina Singh Chautala and Sh. Anoop Dhanak, MLAs of INLD, have openly dissented and criticized the morals and values of their original political party i.e. Indian National Lok Dal (INLD) ever since the idea of a new Party i.e. Jannayak Janta Party (**hereinafter referred to as ‘JJP’**), was floated, which was later on recognized as a political party in Haryana. They further alleged that all the respondents are openly attending various rallies and programmes organized by a newly formed party i.e. JJP and canvassing and supporting for it and Smt. Naina Singh Chautala has even openly admitted of these factums during the Vidhan Sabha Session dated 21.02.2019, which is recorded in the Vidhan Sabha proceedings.

The petitioners have further alleged that all the respondents have even gone to the extent of bitterly criticizing the leadership of their original political party and thus, their such act and conduct, as noticed in various functions and platforms of other party JJP, set them apart from the values, policies and programmes of their original political party INLD on whose tickets/symbols, they were elected to the Haryana Vidhan Sabha and their acts and conduct are widely telecasted in the electronic media time and again and also prominently published in the print media on regular basis and to this effect, petitioners attached newspapers' clippings of Dainik Tribune dated 17.11.2018 & 07.02.2019; Amar Ujala dated 10.12.2018, 07.01.2019 & 08.01.2019; Hari Bhoomi dated 07.02.2019 and Ajit dated 07.02.2019, proceedings of Haryana Vidhan Sabha dated 21.02.2019 and copies of Video-CDs of news published by Official You Tube Channel dated 09.12.2018, 17.03.2019, 23.03.2019 & 02.04.2019; Punjab Kesari Haryana News Channel dated 06.02.2019; Total TV Haryana News Channel dated 09.12.2018; MH One News Channel dated 24.01.2019 and photographs dated 09.12.2018 and 13.02.2019 attending public meeting of JJP as evidence.

Further, the main contentions of the petitioners in both the petitions are that the acts and conduct of the respondents show the willful intention of severing link with their original political party INLD finally with a purpose of damaging its political interest by attending the meetings and rallies of other party namely JJP and all the respondents well knowingly the repercussions of their acts have, thus, voluntarily and intentionally given up the membership of their original political party i.e. INLD and have willfully defected by attending the rallies and meetings, canvassing for and supporting other party JJP and by criticizing the policies of their original political party INLD in those meetings/rallies.

It has also been alleged that the act and conduct of all the four respondents by criticizing the policies of their original political party INLD on the platforms of other party JJP, tantamount to joining the other party JJP thereby voluntarily giving up the membership of their original political party INLD on whose ticket they had been elected to the Assembly. These acts of all the respondents clearly reflect the parting of ways with the political party on whose symbol they were elected to the Haryana Vidhan Sabha. It is apparent that the respondents have separated themselves from their parent political party to have personal gains and their acts are sufficient to conclude that they have voluntarily given up the membership of their original political party and their defiance is continuing since November, 2018. The petitioners annexed newspaper clippings, media reports and videos as proof of the allegations.

To give force to their contentions, the petitioners in their petitions at Para-12, have relied upon the observations of the Hon'ble Supreme Court, which are as under:

"A person may voluntarily give up his membership of a political party even though he has not tendered his resignation from membership of his party. Even in absence of a formal resignation from the membership an inference can be drawn from the conduct of a member that he has voluntarily given up his membership of the political party to which he belongs."

and prayed to declare the respondents-Sh. Pirthi Singh, Sh. Rajdeep, Smt. Naina Singh Chautala and Sh. Anoop Dhanak disqualified under Tenth Schedule to the Constitution of India and rules framed thereunder as to continue as members of the Haryana Vidhan Sabha with effect from 21.03.2019 having voluntarily given up the membership of their original political party Indian National Lok Dal (INLD) on whose reserved symbol/ticket they had been elected to the House and their assembly seat i.e. 38-Narwana (SC), 56-Dadri, 43-Dabwali and 48-Uklana (SC) be declared vacant with further prayer their salaries and emoluments, which they received till date, be recovered from them.

6. In their replies, respondents in both the petitions denied the allegations leveled against them being vague, misleading, camouflage, afterthought, false, and wrong and suffering from vice of non-application of mind, as there is no clear and direct evidence which may attract disqualification of the respondents. It has been pleaded by the respondents that none of the annexures including CDs contain any act and conduct of respondents which under the Law infers; a) "leaving the original political Party" including "severing ties", or b) "joining any other (new) political party", or c) "formed any party or legislature party/group", or d) violation of any whip/direction"; to hold them disqualify.

In support of their contentions, the respondents have referred to the Tenth Schedule of the Constitution of India as well as the authorities of various Courts in Ravi S.Naik v Union of India, 1994 AIR (SC) 1558; G.Viswanathan v Hon'ble Speaker, Tamil Nadu Legislative Assembly, 1996 AIR (SC) 1060; Jagdambika Pal v. Union of India, 1998(4) JT 319; Dr. Mahachandra Prasad Singh v. Chairman, Bihar Legislative Council, 2005 AIR (SC) 69; Jagjit Singh v State of Haryana, 2007 AIR (SC) 590, read with Kihoto Hollohon v Zachilhu, 1993 AIR (SC) 412 and also referred to the decisions of the Hon'ble Speaker Lok Sabha dated 11.1.1991 (Janata Dal Split); dated 1.6.1993 (Janata Dal Split); dated 3.1.1996 (Janata Dal Split); dated 27.1.2008 (Shri Md Shahid Akhlaque, etc.); dated 10.9.2008 (Shri Kuldeep Bishnoi, etc.); dated 12.1.2008 (Prof. S.P.S.Baghel); followed by Decision dated 28.7.2008 (Sh. RN Budholiya); and the decisions of Hon'ble Chairman, Rajya Sabha of January, 2018 (Shri RCP Singh and of Shri Sharad Yadav).

7. The respondents further contended that they neither left their original political party (INLD) voluntarily, nor joined any other political party. The respondents mentioned the Hon'ble Supreme Court Judgment in case of G. Vishwnathan v/s Speaker, Tamil Nadu Legislative Assembly, AIR 1996 SC 1060, which has ruled as under:-

“If he on his own volition joins another political party, as the appellants did in the present case, he must be taken to have acquired the membership of another political party by abandoning the political party to which he belonged or must be deemed to have belonged under the explanation to paragraph 2(1) of the Tenth Schedule. Of course, courts would insist on evidence which is positive, reliable and unequivocal.”

The respondents have also stated that there was neither any split in the INLD Legislative Party nor the respondents severed their link with the original political party or the legislative party. The respondents brought the extracts of decision of the Hon'ble Speaker, Lok Sabha dated 1st June, 1993 in the case of split in the Janta Dal. Relevant paras referred by the respondents are reproduced as under:-

“Situation envisaged:

296. The law does not provide for coping with the situations that arise in dealing with matters relating to defections. It should be made more comprehensive and should provide for possible situations which can crop up in interpreting and enforcing the law.”

This above decision of the Hon'ble Speaker dated 1st June, 1993 further says:-

“Party Activities Outside the Legislative:

297. The law deals with defections in the Legislature. The defections in the Legislature are connected with the activities of political parties. The activities of the Members of the Parliamentary Party are governed by the Tenth Schedule, other provisions of the Constitution, other relevant laws and the Rules of Procedure followed by the legislature.

298. The activities of the political parties outside the Legislature are not conducted according to the legal provisions for there are no laws available for the purpose. It is not easy or desirable to put them under rigid laws. The political parties should have freedom to conduct their activities as they like. But to control defections in the legislature, at times, it becomes necessary to have the activities of the political parties conducted in a predictable manner.”

The respondents further contended that in view of above, the present petitions do not fall under the purview of law of defection in any way particularly in view of the following:-

- (i) Para “297” above specifically says that “law deals with defections in the Legislature”. In the present case, none of the events and circumstances alleged by the petitioner occurred in the Legislature or related to the Legislature.
- (ii) The INLD party, as provided in para “298”, was free to conduct activities of the Respondents as they like. But in the present case no situation warranted any action by the INLD party against the respondents.
- (iii) Para “298” further says that “to control defections in the legislature, at times, it becomes necessary to have the activities of the political parties conducted in a predictable manner.” It is respectfully submitted that as far as the present case is concerned, there was no defection in the Legislature i.e. there was no division or split in the INLD Legislative Party, nor the Respondents have severed the link with their original political party or the legislative party, nor joined any other political party. The remarks of Hon'ble Speaker in the proceedings dated 21.2.2019 further make the position clear that no such fact like division/split in INLD party has been brought to his notice in writing so far.
- (iv) Further, so far as Respondents are concerned, till now same is the position of INLD Legislative party as was at the time of Vidhan Sabha General Elections, 2014 as stated by the Petitioner in para-4 of the Petition. In support of this, the information regarding allocation of seats to the INLD Members in the House, supplied by the HVSS vide letter dated 21.06.2019.

8. The respondents further contended that although there was no bar as a citizen of India, the petitioners in their petitions have knowingly, intentionally and specifically claimed “that being a member, they are entitled to invoke the legal remedy under Article 191(2) read with Tenth Schedule of the Constitution of India and the “1986 Rules.” The petitioner in Petition No.1 specifically claimed his entitlement to invoke the legal remedy being a member of Haryana Vidhan Sabha, however, he resigned on 6th June, 2019 which is duly accepted by the Hon'ble Speaker, rendering the seat of Member from 40-Fatehabad, Haryana Assembly Constituency vacant in Haryana Assembly on which he was

elected on the symbol of INLD Party, thus he lost his claim and locus standi. The respondents relied upon the observations of the Hon'ble Supreme Court in the case titled "Kunhayammed & others v/s State of Kerala & Anr. Reported as JT 2009 (9) SC 110", which are reproduced as under:-

"40. A petition seeking grant of special leave to appeal may be rejected for several reasons. For example, it may be rejected (i) as barred by time, or (ii) being a defective presentation, (iii) the petitioner having no locus standi to file the petition, (iv) the conduct of the petitioner disentitling him to any indulgence by the court, (v) the question raised by the petitioner for consideration by this Court being not fit for consideration or deserving being dealt with by the apex court of the country and so on. The expression often employed by this Court while disposing of such petitions are "heard and dismissed", "dismissed", "dismissed as barred by time" and so on. May be that at the admission stage itself the opposite party appears on caveat or on notice and offers contest to the maintainability of the petition. The Court may apply its mind to the merit worthiness of the petitioner's prayer seeking leave to file an appeal and having formed an opinion may say "dismissed on merits". Such an order may be passed even ex-parte, that is in the absence of the opposite party. In any case, the dismissal would remain a dismissal by a non-speaking order where no reasons have been assigned and no law has been declared by the Supreme Court. The dismissal is not of the appeal but of the special leave petition. Even if the merits have been gone into, they are the merits of the special leave petition only." In view of above submissions, the petition deserves to be dismissed out rightly on this sole ground."

9. The respondents have also denied the allegations leveled by the petitioners that they openly dissenting and criticizing the morals, values, policies and programmes of their original political party i.e. the INLD, since the idea of floating a new party Jannayak Janta Party (JJP), which later on "recognized as a political party in Haryana"; as alleged by the petitioner. The respondents further stated that firstly, the Jannayak Janta Party (JJP) is not a "recognized political party in Haryana". JJP is a registered political party, which, as per answering respondents knowledge, has yet to attain its status of "reorganization" either at State level or at the National level, as the case may be. Even otherwise, the said JJP party is said to have got registration from the Election Commission of India w.e.f. 05.03.2019 only. Secondly, "criticizing" the leadership of their original political party is also wrong, false and denied as alleged. Otherwise also, though not accepted in any manner, it does not come under the domain of Anti-defection Law but is the internal matter of a political party. Thirdly, the term 'dissented', though not accepted in any manner, covers those act and conduct which occur in the House or otherwise on the violation of whip/direction, if any, issued by the party. Only such act and conduct, if any, may attract disqualification under Para-2(1)(b) of the Tenth Schedule, which is not there in the present case. Fourthly, the term "dissented and criticized" even if occurred, though not accepted in any manner, outside the Legislature then it comes under the purview of a political party (INLD). If it was so, the leadership of the original political party was free to conduct accordingly by taking appropriate action against the Respondents. Fifthly, none of the annexures attached with these Petitions contain evidence which is positive, reliable and unequivocal. Sixth, even none of the two extra pages, added unlawfully with Annexure P/1 of Petition No.1 supplied vide HVSS letter dated 21st June, 2019, show any such act and conduct which attracts disqualification. Rather, one of these two documents clearly states in the last line that for certain reasons he has not joined JJP. Seventh, the answering respondents have neither left the original political party, nor joined any other political party, nor dissented in the House, nor severed link with the INLD legislative party which act and conduct may attract any of the provisions of Para-2(1)(a), or Para-2(1)(b) or 2(2) of the Tenth Schedule of the Constitution of India read with "1986 Rules". Thus, the allegations are wrong, vague and have been made without application of mind.

The respondents have also denied that act, conduct and speech dated 21.02.2019 of Smt. Naina Singh Chautala (Respondent) has not shown anything which may attract this disqualification in any manner. The respondents have also referred cases of INLD, MLA Sh. Nagendra Bhadana, who had shared platform and rallies along with politicians of other political party including the Hon'ble Chief Minister, Haryana and Hon'ble Member Sh. Mulayam Singh Yadav, from the opposition benches who in the Session of 16th Lok Sabha praised Hon'ble Prime Minister and also wished him to return as such again after the coming elections of the 17th New Lok Sabha. They also stated that in the present parliamentary system of Government sometimes, a member of any House of the Legislature belonging to any political party has to perform his customary, social, official or private functions, thus, the allegation made by the petitioner are denied being false and wrong.

10. The respondents have further pleaded that the decision dated 1.6.1993 of the Hon'ble Speaker, Lok Sabha in Janata Dal case says that the respondents have not committed any omission or commission or act or conduct, which attract disqualification of a Legislator. The abstract of decision, regarding obligations and rights for the legislators, is as under:

“It enjoins that the legislator has to vote according to the Whip issued to him by his party, has not to leave his party, has not to form any party, has not to join any party. If he violates these obligations, he can be declared as disqualified to be the member of the legislature and lose his membership of the legislature.”

The respondents have also pleaded that in the Petitions, there is no situation of division or split or merger or leaving the party or joining other (new) party or suspension from the party or forming any party/group or any action taken by the original political party against the respondents for alleged anti-party activity or violated any Whip/Direction issued by the party, or severing the link with the original political or legislative party etc. None of the actions and conduct of the respondents, thus, shows that they attract disqualification as a legislator in the legislature, in any manner.

11. I have heard the learned counsel for the parties as well as petitioner in Petition No.3 and respondents in person on 27.08.2019 and 03.09.2019 and have gone through the entire record furnished by the petitioners in their petitions including newspaper clippings, CDs and Annexures. I have also gone through the comments/written statement/reply filed by the respondents carefully.

12. Though no authority/judgment has been mentioned by the petitioners in their petitions, but during the arguments they have relied upon the order dated 04.12.2017 passed by the Chairman, Rajya Sabha on the petition filed by Shri Ram Chander Prasad Singh, Member and Leader of the Janata Dal (United) in Rajya Sabha against Shri Sharad Yadav another Member of Rajya Sabha under the Tenth Schedule to the Constitution of India holding the respondent Shri Sharad Yadav as disqualified for being a Member of the House in terms of paragraph 2(1)(a) of the Tenth Schedule to the Constitution of India and ceased to be a Member of the Rajya Sabha.

During the course of arguments, the learned counsel for the petitioners have also relied upon the judgment of Hon'ble Supreme Court in case titled G. Viswanathan versus Hon'ble Speaker, Tamil Nadu Legislative Assembly, Madras and another, wherein the Hon'ble Supreme Court has observed that:-

“The act of voluntarily giving up the membership of the political party may be either express or implied.”

Besides above, the learned counsel for the petitioners also referred to the judgment of Hon'ble Supreme Court in case titled “Ravi S. Naik vs Union of India”, wherein the Hon'ble Supreme Court has observed that:-

“The words voluntarily given up his membership” are not synonymous with “resignation and have a wider connotation. A person may voluntarily give up his membership of a political party even though he has not tendered his resignation from the membership of that party. Even in the absence of a formal resignation from membership an inference can be drawn from the conduct of a member that he has voluntarily given up his membership of the political party to which he belongs.”

13. The respondents relied upon many judgments/orders/authorities passed by Hon'ble Supreme Court, Speaker, Lok Sabha and other Legislative Bodies, which have been mentioned in their respective replies and during the arguments they also relied upon them.

14. I have gone through the judgments/orders/authorities passed by Hon'ble Supreme Court, Speaker, Lok Sabha and other Legislative Bodies but the case of the respondents is different from the case law submitted by the respondents during the course of arguments because the respondents have never denied regarding the newspaper reports, CDs and photographs produced by the petitioners against the respondents regarding giving up their membership of their original political party INLD.

15. Before conclusion, it is necessary to talk about Paragraph 2(1)(a) of the Tenth Schedule to the Constitution of India, which speaks about voluntarily giving up of membership of such political party. Paragraph 2(1)(a) of the Tenth Schedule is reproduced herein below:-

“2. Disqualification on ground of defection.—(1) Subject to the provisions of paragraphs 4 and 5, a member of a House belonging to any political party shall be disqualified for being a member of the House—

(a) if he has voluntarily given up his membership of such political party; or”

16. It is pertinent to mention it here that all the respondents tendered their resignations personally of their seat in the House on 03.09.2019 i.e. the date which was fixed for the arguments of the parties in the petitions and I accepted their resignations on that very date, which were notified by the Haryana Vidhan Sabha Secretariat on 04.09.2019. However, the resignations of the respondents have no effect on the merit of the case, as the cause of action in the petitions has arisen firstly when notices were issued to the respondents in Petition No.1 on 27.03.2019 and secondly on 26.07.2019 when notices were issued to the respondents in Petition No.3.

17. The act of voluntarily giving up membership from the original political party may be either expressed or implied. It is not necessary that Member has required to submit his/her resignation from the membership of his/her original political party. In the present case, as per evidence available on record, looking into the act and conduct of respondents, it certainly amounts to their giving up membership of the original political i.e. Indian National Lok Dal (INLD), which had set up them as candidate for election of such political party. Though their resignations from the membership of Haryana Vidhan Sabha have been accepted by me with effect from 03.09.2019 yet in such situation, there can be no escape from the conclusion that the respondents have incurred disqualification from the membership on the ground of defection under Para-2(1)(a) of the Tenth Schedule to the Constitution of India read with Article 191(2) of the Constitution of India.

18. I, therefore, hold that all the respondents, namely Shri Pirthi Singh, Shri Rajdeep, Smt. Naina Singh Chautala and Shri Anoop Dhanak in both the petitions deserve disqualification for being a Member of the Haryana Legislative Assembly in terms of Paragraph 2(1)(a) of the Tenth Schedule to the Constitution of India. Hence, they are ceased to be a Member of the Haryana Legislative Assembly with effect from 27.03.2019. I order accordingly.

19. The follow-up action may be taken in accordance with law.

20. A copy of this order be placed on the file of both petitions.

Chandigarh:
The 10th September, 2019.

KANWAR PAL,
Speaker,
Haryana Vidhan Sabha.

Chandigarh:
The 10th September, 2019.

R. K. NANDAL,
Secretary,
Haryana Vidhan Sabha.